

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Aug 09, 2010

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ATTEST

By Tammie Brooks on Aug 09, 2010

FOR THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

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on
MULTIDISTRICT LITIGATION

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

TRANSFER ORDER

Before the entire Panel*: Plaintiff in an action pending in the District of Rhode Island (*Blankenship*) has moved, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), to vacate the portion of the Panel's order conditionally transferring the action to MDL No. 2036. Similarly, defendants in actions pending in the Northern District of Texas (*Simmons*) and the Western District of Wisconsin (*Harris*) have moved to vacate the portions of the Panel's order conditionally transferring those actions to the MDL.¹ The three actions are listed on Schedule A hereto. Plaintiffs' Lead Counsel and Plaintiffs' Executive Committee in MDL No. 2036 oppose all three motions to vacate. Plaintiffs in *Simmons* and *Harris* also oppose the motion to vacate directed to each of their respective actions.

After considering all argument of counsel, we find that these three actions involve common questions of fact with the overdraft actions in this litigation previously transferred to the Southern District of Florida, and that transfer of these actions to the Southern District of Florida for inclusion in MDL No. 2036 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. We further find that transfer of these actions is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that (1) the Southern District of Florida was a proper Section 1407 forum for actions involving claims relating to the alleged improper imposition of bank checking account overdraft fees; and (2) while there are some unique questions of fact from bank-to-bank, overdraft actions against varying banks share sufficient factual questions relating to industry-wide bank posting policies and procedures to warrant centralization of all actions in one MDL docket. *See In re Checking Account Overdraft Litigation*, 626 F.Supp.2d 1333 (J.P.M.L. 2009).

In opposing transfer, movants raise numerous arguments: they are currently named in but a single overdraft action (argument of Associated Banc-Corp); the subject action is narrower than those in the MDL (argument of the *Blankenship* plaintiff); or proceedings in the MDL have advanced

* Judge Heyburn took no part in the disposition of this matter.

¹ The moving defendants are Comerica, Inc. (as to *Simmons*) and Associated Banc-Corp (as to *Harris*).

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to the point that transfer will be impracticable and prejudicial to the involved parties (argument of Comerica, Inc., and Associated Banc-Corp). We respectfully disagree with these arguments. In our original order in this docket, we transferred an action against certain Citi defendants,² despite their contention that including the action in the MDL was inappropriate because, *inter alia*, they were not named in any other proposed class action dealing with overdraft fees incurred through debit card transactions. See *In re Checking Account Overdraft Litigation*, 626 F.Supp.2d at 1335-36. With respect to the *Blankenship* plaintiff's argument, we note that even if the factual allegations in *Blankenship* are more limited than those of actions already in the MDL, those allegations are present in at least some of the already-centralized actions; in addition, Citizens Financial Group, Inc., a defendant in *Blankenship*, is already a party to the MDL. With respect to the argument of Comerica, Inc., and Associated Banc-Corp, we point out that this MDL was created in June 2009, and that we have transferred approximately twenty actions to it thus far in 2010.

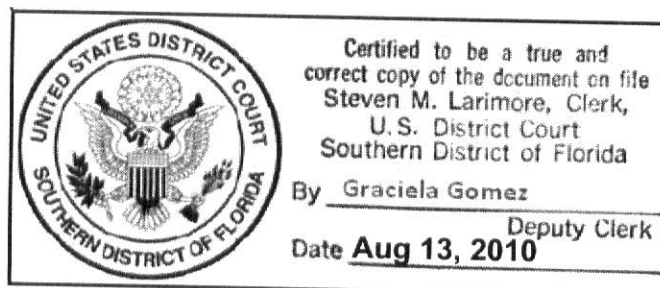
IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the three actions listed on Schedule A are transferred to the Southern District of Florida and, with the consent of that court, assigned to the Honorable James Lawrence King for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



Robert L. Miller, Jr.
Acting Chairman

John G. Heyburn II, Chairman*	Kathryn H. Vratil
David R. Hansen	W. Royal Furgeson, Jr.
Frank C. Damrell, Jr.	Barbara S. Jones



² Citigroup, Inc., Citibank, N.A., and Citibank F.S.B.

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SCHEDULE A

District of Rhode Island

Michael L. Blankenship v. RBS Citizens, N.A., et al., C.A. No. 1:10-163

Northern District of Texas

Delphia Simmons v. Comerica, Inc., C.A. No. 3:10-326

Western District of Wisconsin

Pamela Harris v. Associated Banc-Corp., C.A. No. 3:10-182

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MDL No. 2036

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